

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ADT, LLC

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL UNION 364

Cases 18-CA-264654
18-CA-266951
18-CA-270402

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DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried remotely via Zoom video-technology on January 20-21, 2021. The consolidated complaints (collectively, the complaint) allege that the Respondent, ADT, LLC violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the Act)¹ in September 2020² by unilaterally changing, and without first bargaining in good faith with the International Brotherhood of Electrical Workers Local Union 364 (the Union), the following terms and conditions of employment of employees represented by the Union: wages; overtime pay; accrual and use of paid time off; eligibility for bonus pay; and the performance review system. The complaint further alleges that the Respondent violated Section 8(a)(1) of the Act by interrogating and threatening employees regarding their support for the Union between September and December.

The Respondent denies the material allegations and avers that it lawfully withdrew recognition of the Union because it no longer had majority support of the appropriate bargaining unit. It admits, however, that the following individuals were supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act: James

¹ 29 U.S.C. §§ 158(a) (5) and (1).

² All dates are in 2020 unless otherwise indicated.

Nixdorf – Director of Labor Relations; Matt Ides – Team Manager High Volume Install; Shawn Bell – General Manager-Sales; and Gary Talma - General Operations Manager.

Belatedly, the Respondent also contends that President Joseph R. Biden's removal of former General Counsel Peter Robb without proper cause was unlawful under the Act. The Respondent maintains that the case must be dismissed or stayed until Robb is reinstated because anyone acting on behalf of the General Counsel regarding the prosecution of this action is acting ultra vires or without lawful authority to do so. Robb was dismissed by President Biden on the first day of the hearing and no excuse was offered for the delay in raising the issue. Accordingly, the Respondent's jurisdictional argument, raised for the first time in its post-hearing brief, is denied as untimely. See 102.23 of the Board's Rules and Regulations. In any event, the Respondent can raise this jurisdictional defense on exceptions to the Board.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company engaged in the installation and service of residential and commercial security systems, has an office and a place of business in Janesville, Wisconsin, is where it annually derives gross revenues in excess of \$500,000 from the sale and service of retail alarm systems, and purchases and receives goods valued in excess of \$5,000 directly from points outside Wisconsin. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations³

The Respondent installs and services residential and commercial security systems throughout the United States. Prior to 2020, the Respondent operated offices in Rockford, Illinois and Madison, Wisconsin. Each facility included meeting space for service employees and office space for support staff, and stored parts and equipment. Both facilities were managed by Ides, who communicated frequently with the service technicians. Ides reported to Bell.

Service technicians receive their assignments at home through the VRT system on company-issued laptop computers and typically travel from home to their first daily assignment. Prior to August, the Madison and Rockford employees earned wages at the same hourly rates.

³ The material facts are based on the credible and undisputed testimony of employees Danny Sissum and David Anderson. Nixdorf and union organizer Bradley Williams filled in the labor relations details.

The Rockford-based employees covered service calls in northern Illinois. Occasionally, they were given assignments in Wisconsin and Iowa. If there were scheduling issues, they communicated with Ides. Routinely, the Rockford employees traveled to the Rockford facility to pick up and drop off equipment on Fridays and other days as needed. They typically worked alone. If an assignment required multiple technicians, the Rockford employees usually worked with other Rockford technicians. Occasionally, they worked with technicians from Madison.

Prior to 2020, the Madison-based employees generally serviced areas in Wisconsin. Occasionally, they completed service calls in northern Illinois.⁴ Their regular parts and equipment pick up and drop off at the Madison facility was on Tuesdays.

B. The Collective-Bargaining Relationship with the Union

The Union local's normal coverage area is northwestern Illinois. Alan Golden is the business manager and financial secretary. Larry Rowlett is the assistant business manager. Danny Sissum, a security technician at the Janesville office, previously based out of Rockford, served as the union shop steward.

On October 21, 1994, the Board certified the Union as the exclusive collective-bargaining representative of the Rockford facility employees in the following bargaining unit:

All full-time and regular part-time installers, technicians and service personnel employed by the Employer at its 510 LaFayette Avenue, Rockford, Illinois facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

Since then, the parties entered into successive collective-bargaining agreements, the most recent of which was effective from September 1, 2017 to August 31 (the CBA). While working out of Rockford, the CBA terms and conditions were applied to the Rockford employees, including wages, overtime, vacation, and grievance procedure, among others. Pursuant to the CBA, the Respondent remitted dues to the Union for each former Rockford-based employee. The CBA's terms never applied to the Madison technicians.

C. Consolidation of the Madison and Rockford Offices

On May 22, 2019, Rockford and Madison employees were informed by Bell that they would be relocating to a new facility in Janesville, Wisconsin, which was located halfway between the two offices:

In an effort to streamline resources and better serve both you and the customer, we have made a decision to relocate both current offices, combining them into one physical building. We will be moving into a newly renovated office space in Janesville, WI. The

⁴ Illinois requires a certification for technicians to operate in the state. Former Madison employees who occasionally worked in Illinois also had those certifications.

move is anticipated to take place sometime late July or August. I will continue to share details as they become available throughout the project.

Bell notified Rowlett of the change around the same time. He attributed the decision to economic reasons but added that everything else would stay the same. Specifically, the Rockford and Madison employees would continue covering the same service areas as they had for over 20 years.

Rockford employees who sought clarification regarding the move were assured by Ides that their customary service areas and everything else would remain the same, and that they would “still stay separated” from the former Madison employees. Ides echoed that assurance to Rowlett when he inquired as to the effect that the move would otherwise have on the Rockford employees’ terms and conditions of employment: they “would be working under that [CBA] and everything would be the same other than when they went to an office location, it would be a different location.” Based upon that representation, the Union did not demand to bargain over the effects of the closure of the Rockford office or the move to Janesville.

On July 23, 2019, Bell followed-up with another memorandum to Rockford and Madison personnel regarding the Janesville relocation/consolidation:

Team,

Well, the time has come... As you know, the Rockford office is moving into a transitional location until our new, permanent location is complete. We will be moving the branch on Friday, and opening in our temp location on Monday. The coming days have been planned as well as possible; however, we are still anticipating some fast moving.

The address for the temporary office is:
2136 W. US Highway 14
Janesville, WI 53545

Along with the move, I have some unfortunate news that can’t be overlooked. Debbie LaPour has made the decision to not relocate with us and will be making Monday, 7/29 her last day with ADT. Debbie has played an integral part (most recently) in the preparation for our move and has always been a vital piece to the daily operation of this office. We have been fortunate to have her with us over the years and she will be missed. I am extremely grateful for all that she has done for us and am confident that she will have the same kind of impact on the next stop in her journey.

Please take a moment to thank Deb and wish her well moving forward.
Thank you,

On September 1, 2019, the Respondent closed the Rockford office and transferred the six employees to a temporary office in Janesville. At that time, the bargaining unit consisted of the following seven Rockford employees: David Anderson, Gabriel Files, Jon Frazier, Vaughn

Greenwood, Gabriel Hermanson, Scott Joswick, and Danny Sissum. However, by October, Hermanson was no longer in the bargaining unit, which was now down to six members.⁵ Meanwhile, the Madison facility remained operational and its technicians and installers were not transferred to Janesville at that time.

In December 2019, the temporary Janesville facility closed and relocated to a permanent facility in Janesville. Around the same time, the Madison office closed, and those employees reported to the Janesville facility. By March, Greenwood was no longer in the bargaining unit, which was reduced to five members.⁶ All continued to report to Ides.

After the merger, employees attended a move-in breakfast and training in December 2019 and January. At that point, Talma replaced Bell as general manager. However, due to the Covid-19 pandemic, weekly employee meetings, which included the Janesville, Milwaukee, and Minnesota facilities, were held virtually via Microsoft Teams technology by Talma.⁷ There were also meetings run by Ides involving only the Janesville technicians.⁸

After January 1, the former Rockford-based employees continued to service northern Illinois and their terms and conditions of employment under the CBA, including wages and duties, remained the same. The former Madison-based employees continued to service areas primarily in Wisconsin.⁹

⁵ GC Exh. 24 at 28-32.

⁶ GC Exh. 25 at 5-8.

⁷ It was not until after September 2020 that the Respondent resumed convening in-person employee meetings. (R. Exh. 8 at 14; Tr. 196-97, 143-45.)

⁸ R. Exh. 1 at 3, 8 at 1-6, 8, 18, 22.

⁹ The General Counsel moved for an adverse inference to be drawn based on the Respondent's failure to produce documents relating to dispatch logs, on-call lists and on-call assignments reflecting the number of service calls or assignments performed by all Rockford employees in the Madison territory, and Madison employees in the Rockford territory after May 1, 2019. (GC Exh. 27 at 6 and 28 at 4.) I agree that that an Excel spreadsheet produced in lieu of the actual records constituted non-compliance warranting an adverse inference that had Respondent entered these documents into evidence, they would not have supported Respondent's claim of changed geographic territory. See *McAllister Towing & Transportation*, 341 NLRB 394, 396-397 (2004) (evidentiary sanctions warranted where the respondent for failing to substantially comply with the subpoenas after issuance of order partially denying its petition to revoke). Based on the record, however, such sanctions are unnecessary. There is no discernable evidence in the record that former Madison and Rockford employees crossed over into each other's customary service areas more after the merger than before. The ambiguous testimony of Nixdorf, a labor relations representative who was unfamiliar with the Excel spreadsheet, merely confirmed a continuation of the status quo after the merger; it did not substantiate the Respondent's assertion that the former Rockford and Madison employees crossed over into each other's routine services with greater frequency after the merger. (Tr. 421-22.) Secondly, Sissum and Anderson credibly testified that former Rockford employees were not assigned more service calls to the Madison area after the merger, as they continued to be dispatched to jobs primarily in the Rockford area. (Tr. 136-37, 256, 259.) Lastly, the General Counsel was offered the opportunity to continue pressing the issue of production but decided to rest its case instead. (Tr. 385-86.)

The former Rockford employees, as they did before the merger, generally picked up and dropped off parts and equipment at Janesville on Fridays, while the former Madison employees continued to perform that task on Tuesdays. Occasionally, the former Rockford employees and Madison employees saw each other when picking up or dropping off on non-scheduled days.¹⁰

D. Union Files and Withdraws Representation Petition

By May 4, Union organizer Bradley Williams concluded that the composition of the Janesville workforce gave the Union a good chance to prevail in an election to extend the bargaining unit. Based on the information available to him at that time, he believed there were six bargaining unit employees and five unrepresented employees at Janesville.¹¹

On May 8, the Union filed a representation petition with Region 18 to create a new bargaining unit consisting of both the former Rockford and the other technicians and installers then assigned to Janesville. The petition sought to create a bargaining unit including all “service technicians, lead install technicians, lead service technicians, service technician trainees [and] install technician trainees” working out of Janesville.¹² By May 15, however, Williams learned that the Union’s odds of prevailing in an election evaporated when the Respondent transferred one of the bargaining unit employees to another facility, making it a likely “5 on 5 campaign.”¹³ The Union withdrew its petition and launched an effort to “grab one member for our side.”¹³

E. The Respondent Withdraws Recognition of the Union

Between May 20 and June 4, the Union attempted to sway unrepresented employees to its side. That effort backfired, however, when the Respondent was presented with a decertification petition by former Madison employees Micah Christiansen, Ethan Gatzow, Chet Klescewski, Oscar Cruz, and Kristoffer Wicks, and a newly hired employee, John Hummel.¹⁴ At that point, there were five bargaining unit employees left: Anderson, Files, Frazier, Joswick and Sissum.¹⁵

Nixdorf authenticated the signatures and decided that they covered a majority of the Janesville workforce.¹⁶ On June 22, Nixdorf informed Golden that the Respondent planned to withdraw recognition of the Union as the exclusive collective-bargaining representative of the bargaining unit after the CBA expired:

This letter is to inform you that a majority of the ADT employees of the IBEW Local 364 bargaining unit in Janesville, WI have given the Company a copy of a decertification/withdrawal of recognition petition. This petition states that the employee-signers do not want to be represented by the Union and that they want the

¹⁰ Anderson conceded that but for the 2021 pandemic, after January the Janesville employees would have been expected to meet there for employee meetings. (Tr. 138-41, 204, 265, 306-09.)

¹¹ R. Exh. 1.

¹² GC Exh. 12.

¹³ R. Exh. 1.

¹⁴ GC Exh. 14.

¹⁵ GC Exh. 25 at 16.

¹⁶ R. Exh. 2.

Company to withdraw recognition of the Union immediately. This petition was not solicited. Moreover, we have authenticated the petition and verified that it is supported by a majority of the employees in the bargaining unit. As a result, the Company has received from a majority of employees in the bargaining unit objective evidence of a clear demand that the Company immediately withdraw recognition of the Union as the employees' collective bargaining agent.

The current collective bargaining agreement is set to expire on August 31, 2020. Absent credible objective evidence the union maintains support of the majority of employees in the bargaining unit in Janesville, WI, ADT will withdraw recognition at the expiration of such agreement.

Thank you for your immediate attention to this matter.

On July 6, Golden replied, rejecting the Respondent's assertion that it lawfully withdrew recognition of the Union as the representative of the bargaining unit's employees:

I received your letter dated June 22, 2020 in which ADT claims to have a petition supported by the majority of the employees in the bargaining unit demanding that ADT withdraw recognition of the Union. There are a number of problems with the claims set forth in your letter. Accordingly, it remains Local 364's position that ADT continues to have a duty to bargain for a successor collective bargaining agreement for the Rockford bargaining unit employees, now working out of Janesville.

Since ADT transferred employees from Rockford to Janesville, ADT has continued to apply the terms and conditions of the Local 364 collective bargaining agreement to that bargaining unit. To our knowledge, ADT has never applied the terms of the Local 364 agreement to any other employees who may be working in the Janesville location. The Rockford bargaining unit members who were transferred to Janesville continue to want Local 364 to represent them, and none have signed any such petition, as claimed by ADT. To the extent such a petition was signed by employees outside of the Rockford bargaining unit, Local 364 has never asserted that they are bound by or covered by Rockford collective bargaining agreement. Accordingly, their views have no bearing on ADT's obligations to the Rockford bargaining unit.

ADT has not provided Local 364 with any documentation to substantiate its position. Accordingly, Local 364 expects ADT to continue to abide by and to bargain in good faith over the collective bargaining agreement for the Rockford bargaining unit. Absent ADT's cooperation in this regard, Local 364 will take any lawful action it deems necessary or appropriate to enforce the agreement and protect the rights of its bargaining unit employees.

On July 15, Golden followed-up by requesting that Nixdorf provide dates in August for bargaining over a successor agreement to the CBA, which was set to expire on August 31.

Rowlett made similar requests on July 31, August 5, August 21, August 31, September 14, and

September 24. Nixdorf never responded.¹⁷ All the requests went unanswered as the Respondent, as promised, withdrew recognition of the Union on August 31, as the exclusive collective-bargaining representative of the bargaining unit.

5 At some point prior to September, Anderson initiated a conversation with Christiansen, who Anderson suspected of being involved in the decertification effort. Christiansen informed Anderson he was acting on his own accord, and not at the behest of the Company.¹⁸

10 *F. Changes to Unit Employees Terms and Conditions of Employment*

As a result of its withdrawal of recognition, the Respondent immediately ceased collecting and remitting unit employees' dues to the Union. It also implemented several other unilateral changes to unit employees' terms and conditions of employment on or after September 1.¹⁹

15 1. Wages

Prior to the withdrawal of recognition, the former Rockford employees were paid according to the longevity-based wage scale set forth in the CBA.²⁰ In September, the Respondent increased wages for the former Rockford employees between \$.12 and \$.71 per hour, averaging about \$.57 per hour increase among the five former Rockford employees – Anderson, Files, Frazier, Joswick and Sissum.²¹ The Respondent also awarded increases based on employees meeting certain performance criteria and training.

25 2. Bonuses

Prior to the withdrawal of recognition, the former Rockford employees were not eligible to earn bonuses. Upon withdrawal of recognition, Respondent implemented a new performance-based bonus plan, the TFE. Under the new bonus structure, the former Rockford employees received bonus of between \$200 and \$410 every two weeks under the newly implemented performance-based bonus plan.²²

35 The subject of the bonus and the union came up soon thereafter. On September 11, Sissum was in the inventory room while Ides was explaining the bonus plan to another employee. Sissum interjected and asked Ides whether “there was any consideration” as to what would happen if the Respondent lost the Union’s grievance regarding the bonus plan. Ides speculated that the bonus plan “would go away.”

In early October, Ides informed Anderson that he would be receiving the largest bonus award at Janesville. He warned, however, that if the bargaining unit employees “go back to the

¹⁷ GC Exh. 17-23.

¹⁸ There is no evidence that the decertification effort was precipitated by the Respondent.

¹⁹ Relying on its defense that it lawfully withdrew recognition of the Union and, thus, was under no obligation to bargain, the Respondent admits that it made the alleged unilateral changes.

²⁰ GC Exh. 3 at 22.

²¹ GC Exh. 33 at 3-4.

²² GC Exh. 34.

Union that this will go away, that you will not be part of the bonus program, the TFE program . . . ADT would not do both. That, you know if you are part of the Union, you can't have the bonus program." Anderson replied that if they were part of the Union everything would be up to negotiation. Ides simply reiterated that the Respondent "would not do both" and asked
 5 Anderson, why he wanted to be in the Union. Anderson replied by asking why management did not want the Union. That was the end of the conversation.

Anderson had another conversation with Ides about the bonus program in mid-November when Anderson informed him that he would be subpoenaed to appear in this case. Anderson
 10 then asked Ides to place him on leave for the hearing date. Ides replied, "You know, if you guys go back to the Union, that the TFE bonus program will go away." Anderson asked why. Ides replied, "ADT is very firm on this. They will not do both."

Sissum had yet another conversation with Ides regarding the bonus and the pending
 15 grievance on December 9: "would it still be the same thing, you know, could we still be able to work with it . . . if we were able to go back to negotiating it." Ides speculated that the bonus plan would go away for the represented employees. Sissum disagreed and told Ides that he believed the bonus could be reinstated for the represented employees during negotiations if the grievance was successful. Yet again, Ides replied with conjecture: "I think it's only designed for the non-
 20 Union people as an incentive" and "if we went back to negotiating, the TFE plan would go away," with the former Madison and Rockford employees all "on the same page."

3. Overtime

25 Prior to the withdrawal of recognition, the CBA's overtime provision enabled the former Rockford employees to earn overtime pay after working 8 hours each day, regardless of how many hours they worked that week. After withdrawing recognition, the Respondent changed that policy and required that employees work 41 hours per week to get one hour of overtime. Holidays and other paid time off are also no longer included in the calculation for overtime.²³

4. Vacation and Sick Leave

35 Prior to the withdrawal of recognition, the former Rockford employees earned vacation time and sick time under the CBA. After withdrawing recognition, the Respondent replaced their separate vacation and sick time allowances with a lump-sum category of paid time off. Paid time off is now dependent on the hours worked each week. The former Rockford employees can also now sell their paid time off back to Respondent and roll over up to 40 hours of paid time into the next year.²⁴

5. Performance Review System

40 Since approximately mid-2020, the former Rockford employees were tasked with notifying customers about a survey program called Medallia. Prior to the withdrawal of

²³ GC Exh. 3 at 11-12.

²⁴ GC Exh. 3 at 9-10, 15-16.

recognition, the customer responses had no effect on compensation. Since the withdrawal, those responses have been factored into employees' performance reviews and, ultimately, their compensation.

5

LEGAL ANALYSIS

I. WITHDRAWAL OF RECOGNITION AND UNILATERAL CHANGES

10 The facts are generally undisputed. Represented employees at Rockford and
unrepresented employees at Madison were reassigned to a new facility at Janesville. Based on
the CBA, the Rockford employees continued to have certain terms and conditions
distinguishable from the Madison employees. Those distinctions disappeared when the CBA
expired on August 31 and the Respondent withdrew recognition. Thereafter, the Respondent
15 unilaterally changed the method of compensation, overtime pay and paid time off, implemented
a bonus system previously offered only to unrepresented employees, and instituted a new
performance review system. The pivotal issue is whether the Respondent lawfully withdrew
recognition of the Union.

20 In *Johnson Controls, Inc.*, 386 NLRB. No. 20 (2019), the Board articulated the basis by
which an employer could anticipatorily withdraw recognition of a union perceived to have lost
majority status. An employer may revoke recognition of the bargaining unit where the unit has
lost majority status by presenting the union with a decertification petition at least 90 days before
withdrawing recognition. The Union is allotted 45 days from this notification to prove it has
majority support or to regain it.

25

The representation petition included only the signatures of five former Madison employees
and another employee who was employed after the merger; the signatories were never part of the
bargaining unit. *Johnson Controls* is therefore inapplicable. By relying and acting on the petition
to decertify the Union, the Respondent acted at the behest of non-bargaining unit employees who
30 were ineligible to sign such a petition. These employees were never bound by the CBA, nor did
the Respondent ever remit dues to the Union on their behalf. Since the petition was not signed by
any of the five unit employees formerly assigned to Rockford, there was no erosion of support for
the Union. The Respondent does not dispute that fact. It insists, however, that other factors
support its contention that the appropriate bargaining unit should be deemed to have included the
35 former Madison employees.

Initially, the Respondent contends that the appropriate bargaining unit came to include the
Madison employees because the Union attempted to expand its membership to include them by
filing a representation petition. One need look no further than Board precedent in *ADT Security*
40 *Services, Inc.*, 355 NLRB 1388 (2010), *enfd. NLRB. v. ADT Sec. Servs., Inc.*, 689 F.3d 628, 632
(6th Cir. 2012), articulating the “compelling circumstances . . . required to overcome the
significance of bargaining history.” *Id.* at 1388 (emphasis added). In that case, the Respondent
merged a facility with 14 represented employees and another with 25 unrepresented employees
into one facility. The Board rejected the Respondent’s contention that the employees assimilated
45 into a single unrepresented group since most of the material terms of employment remained intact:
the Respondent kept distinct on-call lists for each of group of employees; employees were still

dispatched from home and serviced the same areas as before the merger; and employees visited the facility on a weekly basis to pick up and drop off parts.

In the present case, the Respondent failed to demonstrate the existence of compelling circumstances justifying a departure from its 26 year collective-bargaining relationship with the Union. The former Rockford employees, before and after transferring to Janesville, were dispatched from their homes for their jobs, still servicing the same geographical area in Illinois as they had before the merger. Occasionally, before and after the merger, they responded to service calls in Wisconsin. Similarly, the former Madison employees continued to service their customary areas in Wisconsin and were given some assignments in Illinois.

Just as before the merger, the two groups retained separate on-call lists for their customary service areas. The represented employees generally went to Janesville on Fridays, while the unrepresented employees went on Tuesdays, to pick up parts and submit timecards. Occasionally, however, they accomplished those tasks on other days. As a result, there were occasions when the represented and unrepresented employees saw each other during the work week. Finally, all Janesville employees also attended a “welcome breakfast” and a training session at the new facility before they changed to virtual meetings.

Those activities, however, do not amount to the “compelling circumstances” required by *ADT Security Services, Inc.*, 355 NLRB at 1388-89, in order to assimilate unrepresented employees into a bargaining unit. See *Frontier Telephone of Rochester, Inc.*, 344 NLRB at 1272 fn. 10 (rejecting judge’s statement that employee interchange “connotes ... having regular contact between the groups” of existing unit employees and those being accreted to the unit). The two groups shared the same supervisor, as they did before the merger. Nor does the sharing of the same facility by employees who spend the vast portion of their workday in the field suffice to expand the unit. See *Fisher Broadcasting*, 324 NLRB 256 (1997) (employer’s purchase of multiple radio stations, which it merged into a shared facility, did not outweigh the long history of collective-bargaining with the bargaining unit).

Accordingly, by withdrawing union recognition and unilaterally changing the bargaining unit employees’ method of compensation, overtime pay and paid time off, implementing a bonus system that was previously only offered to unrepresented employees, and instituting a new performance review system, the Respondent violated Section 8(a)(5) and (1) of the Act. An employer may not unilaterally change terms and conditions of employment where recognition of a union was withdrawn unlawfully. *In Re Scepter Ingot Castings, Inc.*, 331 NLRB 1509 (2000), *enfd.* 280 F.3d 1053 (D.C. Cir. 2002) (employer’s unilateral changes to employees’ term and conditions of employment after unlawful withdrawal violated Section 8(a)(5) and (1) of the Act).

II. INTERROGATION AND THREATS

The complaint alleges several coercive statements by Ides to employees after the Union’s aborted effort to expand the bargaining unit: (1) interrogated an employee during a telephone conversation in October about his support for the Union and threatened employees with loss of the bonus plan if the Respondent was required to recognize the Union; (2) threatened employees in late November or early December with loss of the bonus plan if Respondent was required to

recognize the Union; (3) threatened employees during a telephone call on December 9 with loss of the bonus plan if the Respondent was required to recognize the Union. The Respondent does not dispute the testimony of Sissum and Anderson that Ides made the statements at issue. It argues, however, that they were not unlawful because the conversations were either initiated by an employee or were merely speculative, indefinite, or hypothetical in nature.

Section 8(c) of the Act permits an employer to make statements regarding benefits that would not count as threats where such statements are “carefully phrased on the basis of objective fact to convey the employer’s belief as to demonstrably probable consequences beyond his control.” *NLRB v. Gissell Packing Co.*, 395 U.S. 575, 589, 618 (1969). The Board considers many factors in evaluating alleged employer threats. *Rossmore House*, 269 NLRB 1176, 1178 (1984), *enfd.* 760 F.2d 1006 (9th Cir. 1985). Those factors were specified previously in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) whether there is any history of employer hostility and discrimination; (2) nature of the information sought; (3) questioner’s position in the company; (4) place and method of interrogation; (5) and truthfulness of the reply.

A. Ides’ Statements to Sissum

As the highest level supervisor at Janesville, Ides had significant influence over its employees. Moreover, his statements to Sissum on September 11 and December 9 came after the Respondent unlawfully withdrew recognition of the Union. However, the remaining *Bourne* factors weigh against a violation.

There was no history of acrimony between the Respondent and the Union relating to the former Rockford bargaining unit. Ides predictions to Sissum – that if employees brought back the Union the bonus program would be eliminated – were not based on objective facts. Indeed, the record established the economic dependence that employees had on the new bonus system and its interrelationship with their performance. However, these conversations, initiated by Sissum, were hypothetical in nature – an inquiry as to the Respondent’s likely response if the Union’s charges were upheld. Nor was there any indication by Sissum that Ides’ posture was threatening in any respect. Moreover, Ides alluded to likely negotiations with the Union if the latter’s legal challenges prevailed. Such commentary falls short of the required conduct for a coercive encounter in the workplace. See *St. Rita’s Med. Ctr.*, 261 NLRB 357, 361 (1982) (supervisor’s isolated and de minimis comment at meeting in response to statement by employee about the union or her union activities was not coercive); *Frito Lay, Inc.*, 341 NLRB 515, 517 (2004) (supervisor’s casual and amicable question to known union supporter whether he would quit if the union lost the election was not coercive).

Moreover, the September 11 allegation also fails on due process grounds. Although that conversation blended into the proof at hearing, it was not pleaded in the complaint. Nor did the General Counsel seek to amend the pleadings or conform them to the proof. See *Earthgrains Co.*, 351 NLRB 733, 733 fn. 4 (reversing judge’s finding of unalleged violation). Considering the totality of the circumstances, Ides remarks to Sissum on September 11 and December 9 regarding the bonus were not coercive in nature. See *Federated Logistics and Operations*, 340 NLRB 255 (2003) (the Board considers all the circumstances to determine if the statement could

reasonably tend to have a coercive impact).; *UARCO, Inc.*, 286 NLRB 55 (1987) (employer statements and written materials must be viewed as a whole and in context, not in isolation).

B. Ides' Statements to Anderson

In contrast, the circumstances relating to Ides' statements to Anderson in early October and mid-November were quite different. The nature of Anderson's responses revealed little effort to mask how he felt, and he was hardly intimidated by Ides' questions. However, Ides, the highest level supervisor at Janesville, initiated the two conversations with Anderson.

Objectively viewed, both sets of statements were clearly calculated to dampen any continued effort by the former Rockford employees to reinstate the Union. Moreover, the statements were conveyed under more formal circumstances, first, when Ides notified Anderson about his bonus and, second, when Anderson requested a day off to testify in this matter pursuant to subpoena.

Ides' one-two punch combination of interrogation first and threat second in the early October conversation with Anderson had no purpose other than to ward off union organizing activity. See *Multi-Ad Services, Inc.*, 331 NLRB 1226, 1227-1228 (2000), *enfd.* 255 F.3d 363 (7th Cir. 2001) (interrogation coercive where employee was not informed of any legitimate purpose for being asked why he wanted a union and given no assurances that he need not answer such a question, or that no reprisals would be taken against him regardless of his answers).

Similarly, Ides' threat to Anderson in mid-November to take away bonuses due to union activity was also not rooted in fact or a legitimate purpose. It was a veiled threat conveyed just as Anderson prepared to exercise his Section 7 rights before the Board. See *Sun Cab, Inc.*, 362 NLRB 1587, (2015) (unlawful threat to eliminate benefits, including the Christmas bonus); *Hudson Moving And Storage Company, Inc.*, 322 NLRB 1028 (1997) (same).

Under the circumstances, Ides' statements to Anderson in October and November coerced him in the exercise of his Section 7 rights in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, ADT, LLC, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers Local Union 364 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time installers, technicians and service personnel employed by the Employer at its Janesville, Wisconsin facility, who are regularly assigned to work in the service territory of the Employer's former Rockford, Illinois facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

4. The Respondent has further violated Section 8(a)(5) and (1) of the Act by unilaterally, without notice to or bargaining with the Union, making changes in wages, hours and working conditions without bargaining to agreement with the Union or reaching an overall good faith impasse, including by changing the method of compensation, overtime and paid time off,
 5 implementing a bonus system that was previously only offered to unrepresented employees, and instituting a new performance review system.

5. The Respondent has violated Section 8(a)(1) of the Act by (a) interrogating employees about their Union support; and (b) threatening employees with loss of the unilaterally implemented bonus plan if the Respondent was required to recognize the Union again.

10 6. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The Respondent has not violated the Act in any of the other manners alleged in the complaint.

15 REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

25 The Respondent shall be ordered to: (1) immediately recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit; (2) at the Union's discretion and upon its request, rescind any or all of the unilateral changes in terms and conditions of employment made since the expiration of the Agreement on August 31; (3) upon request of the Union, restore the status quo as it existed prior to September 1; and (4) make bargaining unit employees whole for any losses that occurred as the result of the Respondent's imposition of the unilateral changes implemented after September 1. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, the Respondent shall compensate the bargaining unit employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 18 allocating the backpay award to the appropriate calendar year. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

40 Due to the change in location of the bargaining unit employees' facility from Rockford to Janesville, the remedial notice to employees shall state that the Respondent shall cease withdrawing recognition from and refusing to recognize and bargain with the Union in a unit consisting of "[a]ll full-time and regular part-time installers, technicians, and service personnel employed by the employer at its Janesville, Wisconsin facility, who are regularly assigned to work in the service territory of the Respondent's former Rockford, Illinois facility." See *ADT Security Services*, 355 NLRB at 1389.

A broad cease-and-desist order is appropriate where a respondent is shown to have a “proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for ... fundamental statutory rights.” *Hickmott Foods*, 242 NLRB 1357 (1979). Such an order is warranted here based on the Respondent’s lengthy record of unfair labor practices: *ADT, LLC*, 369 NLRB No. 31 (2020) (unlawfully bypassed union and dealt directly with employees); *ADT, LLC*, 369 NLRB No. 23 (2020) (unlawful discharge of two employees who engaged in protected union activity); *ADT Security Services, Inc.*, 355 NLRB 1388 (unlawfully withdrew recognition from and failed and refused to recognize and bargain); *ADT, LLC*, 2019 WL 2501867 (June 17, 2019), adopted 2019 WL 3451539 (July 29, 2019) (unlawfully solicited union decertification, withdrew recognition from the union, refused to bargain and abide by collective-bargaining agreement, and coercive interrogation); *ADT LLC*, 2018 WL 2263547 (May 16, 2018), adopted 2018 WL 3091018 (June 21, 2018) (failed to bargain over the effects of facility closure, failed and refused to furnish and timely furnish union with necessary and relevant information); and *ADT, LLC*, 363 NLRB No. 36 (2015) (failed to provide union with relevant and necessary information pursuant).

Lastly, the Respondent shall be ordered to have a representative read the attached remedial notice to the employees in English during worktime, at a meeting, or meetings, scheduled to ensure the widest possible attendance, in the presence of a Board agent.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁵

ORDER

The Respondent, ADT, LLC, Janesville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Withdrawing recognition from and failing and refusing to bargain with International Brotherhood of Electrical Workers, Local Union No. 364, AFL-CIO (the Union) as the exclusive collective-bargaining representative of its employees formerly assigned to the Rockford facility.

b. Unilaterally, without notice to or bargaining with the Union, making changes in wages, hours and working conditions without bargaining to agreement with the Union or reaching an overall good faith impasse, including by changing the method of compensation, overtime and paid time off, implementing a bonus system that was previously only offered to unrepresented employees, and instituting a new performance review system.

c. Asking employees about their Union support.

²⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

d. Threatening employees that it will take away the bonus system that it unilaterally implemented if it is required to recognize the Union again.

5 e. In any manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

10 a. On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

15 All full-time and regular part-time installers, technicians and service personnel employed by the Employer at its Janesville, Wisconsin facility, who are regularly assigned to work in the service territory of the Employer's former Rockford, Illinois facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

20 b. Within 14 days after service by the Region, post at its facility in Janesville, Illinois copies of the attached notice marked "Appendix."²⁶ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In
25 addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent
30 has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 1, 2020.

35 c. If requested by the Union, reinstate the terms for the expired collective-bargaining agreement without retracting any benefit conferred.

²⁶ If the Janesville facility is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If, however, it is closed due to the COVID-19 pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

d. If requested by the Union, rescind the unilateral changes made after September 1 to compensation, overtime, paid time off, and to the new performance review system.

5 e. If requested by the Union, rescind the bonus system unilaterally implemented on September 1.

10 f. Make employees whole for wages and benefits that were lost or decreased because of the changes in terms and conditions of employment that were made without bargaining with the Union, plus interest, as set forth in the remedy section of this decision.

15 g. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED THAT the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 29, 2021



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Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT withdraw recognition from and fail and refuse to bargain with International Brotherhood of Electrical Workers, Local Union No. 364, AFL-CIO (Union) as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time installers, technicians and service personnel employed by the Employer at its Janesville, Wisconsin facility, who are regularly assigned to work in the service territory of the Employer's former Rockford, Illinois facility; but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL NOT unilaterally, without notice to or bargaining with the Union, make changes in wages, hours and working conditions without bargaining to agreement with the Union or reaching an overall good faith impasse, including by changing the method of compensation, overtime and paid time off, implementing a bonus system that was previously only offered to unrepresented employees, and instituting a new performance review system.

WE WILL NOT ask you about your Union support.

WE WILL NOT threaten you that we will take away the bonus system that we unilaterally implemented if we are required to recognize the Union again.

WE WILL rescind our withdrawal of recognition from the Union, and **WE WILL** extend recognition to the Union as the collective-bargaining representative of our former Rockford employees, and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the aforementioned appropriate unit.

WE WILL, only if requested by the Union, reinstate the terms for the expired collective-bargaining agreement without retracting any benefit conferred.

WE WILL, only if requested by the Union, rescind the unilateral changes made to compensation, overtime, paid time off, and to the new performance review system.

WE WILL, only if requested by the Union, rescind the bonus system that we unilaterally implemented.

WE WILL make you whole for the wages and for the benefits that were lost or decreased because of the changes in terms and conditions of employment that we made without bargaining with the Union, plus interest.

WE WILL NOT in any manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

ADT, LLC

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov

Federal Office Building, 212 3rd Avenue, S. Suite 200, Minneapolis, MN 55401-2221
(612) 348-1797, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/0-CA- or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (414) 930-7203.